



## MEMORANDUM OF AGREEMENT

### Parties

This Memorandum of Agreement (MOA) is made between the County of San Diego (County) by and through its Health and Human Services Agency (HHS) and the **San Diego County Superintendent of Schools (SDCSS) and San Diego County School Districts/Local Education Agencies (SDC LEAs)**. The parties to this MOA may be referred to herein collectively as the “parties” or individually as a “party”.

### Recitals

WHEREAS, this MOA is for purposes of each party complying with the Every Student Succeeds Act, Section 1112(c)(5)(B) (20 U.S.C. §6312(c)(5)(B)), requiring:

“[e]ach local educational agency . . . provide assurances that it will collaborate with the State or local child welfare agency to, by not later than 1 year after the date of enactment of the Every Student Succeeds Act, develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged, and funded for the duration of the time in foster care, which procedures shall:

- (i) ensure that children in foster care needing transportation to their school of origin will promptly receive transportation in a cost effective manner and in accordance with section 475(4)(A) of the Social Security Act (42 U.S.C. 675(4)(A)); and
- (ii) ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if – (I) the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation; (II) the local educational agency agrees to pay for the cost of such transportation; or (III) the local educational agency and the local child welfare agency agree to share the cost of such transportation....”

WHEREAS, each agency's role is as follows:

County provides funds for certain services for youth who are under the jurisdiction of the Juvenile Court and is governed by The Fostering Connections Act, which includes school stability provisions relating to youth as defined by 48853.3 (a). County has agreed to provide funding for additional costs incurred in providing transportation to maintain children in foster care in their schools of origin when the client is without an alternate transportation plan. County has agreed to collaborate with SDCSS and SDC LEAs to provide funding in support of transportation to school of origin and its clients when an alternate transportation plan is utilized. County is responsible for those eligible students over which they have care, custody and control as vested by the San Diego Superior Court.

SDCSS is an LEA under federal law, and to ensure compliance with ESSA transportation to school of origin provisions, has coordinated agencies and agreed to administer a countywide transportation program, including staffing and indirect costs, to ensure that all eligible students receive transportation to their school of origin and that any additional cost is shared equally among the other parties to this agreement (County and SDC LEAs) for purposes of county-wide compliance with the ESSA. SDCSS agrees to provide coordination and oversight of the provisions in this agreement.

SDC LEAs ensure students in foster care who reside in their boundaries have access to transportation to their school of origin by providing transportation to children in foster care residing in their boundaries to their school of origin when doing so creates no additional cost to the SDC LEA, and also agreed to collaboratively fund a portion of additional costs incurred in providing transportation to school of origin, when doing so creates such additional costs, to ensure students in foster care who reside in their boundaries have access to transportation to their school of origin.

WHEREAS, this MOA is for purposes of ensuring cost effective and efficient methods for ensuring children in foster care in San Diego County have transportation to school of origin available even when it creates an additional cost to the SDC LEA that will be shared by the parties.

WHEREAS, this MOA will provide cost sharing by SDC LEAs, SDCSS, and County of San Diego of additional costs, as that term is defined herein, incurred by SDC LEAs for the SDC LEAs or SDCSS to provide students in foster care, between the ages of 8 (eight) and 18 (eighteen), with transportation to and from their school of origin. Students in foster care covered by this agreement include:

- Students enrolled in General Education Programs.
- Students served by Special Education Programs whose Individual Education Program does or does not include transportation as a related service.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises set forth below, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Administration of MOA:** Each party identifies the following individual to serve as the authorized administrative representative for that party. Any party may change its administrative representative by notifying the other party in writing of such change. Any such change will become effective upon the receipt of such notice by the other party to this MOA. Notice of the authorized representative shall be sent to each party as follows:

<b><u>County of San Diego</u></b>	<b><u>SDCSS</u></b>
<p>Kimberly Giardina, Acting Director  Health and Human Services Agency  Child Welfare Services  8965 Balboa Avenue  San Diego, CA 92123  858-616-5812  <a href="mailto:Kimberly.Giardina@sdcounty.ca.gov">Kimberly.Giardina@sdcounty.ca.gov</a></p>	<p>Mara Madrigal-Weiss, Director  San Diego County Office of Education  Foster Youth Services Coordinating  Program  6401 Linda Vista Road, Suite 409  San Diego, CA. 92111  858-292-3569  <a href="mailto:mmadrigal@sdcoe.net">mmadrigal@sdcoe.net</a></p> <p>For <b>SDC LEA</b> Points of Contact see  <a href="http://www.sdcoe.net/student-services/student-support/fyhes/Documents/District_AB490_McKinneyVento_Liaison_List.pdf">http://www.sdcoe.net/student-services/student-support/fyhes/Documents/District_AB490_McKinneyVento_Liaison_List.pdf</a></p>

**2. Parties' Responsibilities for Sharing in Additional Costs**

**2.1. County**

- 2.1.1. County will collaborate with SDCSS co-located Education Liaisons to process appropriate referrals to transportation services under this agreement and as per contract number 525896 between SDCSS and HHSA Child Welfare Services. This contract number 525896 and its terms shall take precedence over the provisions of this MOA as it relates to the relationship between the County and SDCSS parties.
- 2.1.2. County will ensure that a Best Interest Determination regarding school of origin has been made by the Education Rights Holder prior to referral to transportation services, and make a best effort to ensure the SDC LEA AB 490 Foster Care Liaison is consulted.
- 2.1.3. County will provide up to \$350,000 annually to SDCSS per contract number 525896 between HHSA Child Welfare Services and SDCSS, which SDCSS will allocate to the countywide transportation program it administers per this MOA, and use to cover the agreed upon portion of shared costs under this MOA as outlined below:
  - 2.1.3.1. When inter-district transportation is being provided to an eligible student, County agrees to fund one third of the additional cost to transport.
    - 2.1.3.1.1. When one SDC LEA elects to waive reimbursement for the additional costs of transportation provided by that SDC LEA,

County agrees to fund fifty percent of the remaining SDC LEA's additional costs.

- 2.1.3.2. When intra-district transportation is being provided to an eligible student County agrees to fund 50% (fifty percent) of the additional cost to transport.
- 2.1.3.3. In the event of an exception request for transportation services via this MOA regarding student eligibility or cost-sharing, County will review and respond to exception requests received from SDCSS on a case-by-case basis.
- 2.1.4. County will conduct background clearances of all drivers employed by contractors of SDCSS and who provide services under this agreement.
- 2.1.5. County will cover all costs associated with clearances of all drivers employed by contractors of SDCSS and who provide services under this agreement.

## **2.2. SDCSS**

- 2.2.1. SDCSS co-located Education Liaisons will collaborate with County on all referrals for transportation services where transportation to the school of origin creates an additional cost for the SDC LEA.
- 2.2.2. SDCSS co-located Education Liaisons will meet with all caregivers and students to orient them to transportation service requirements when SDCSS contracted providers are transporting eligible students.
- 2.2.3. SDCSS co-located Education Liaisons will meet the students on initial day of transport when SDCSS contracted providers are transporting eligible students, except for students who have previously used and are familiar with the transportation services and may not need to be physically met by an Educational Liaison at school on the initial day of resuming transportation services.
- 2.2.4. SDCSS will issue a public bid for transportation providers, vet all applicants and ensure all awarded contract providers adhere to all applicable Education and Vehicle codes outlined in California Law relating to student transportation.
- 2.2.5. SDCSS will provide orientation to all transportation provider drivers.
- 2.2.6. SDCSS will provide a full time manager and secretarial support to administer all phases of the countywide transportation program and will fund all indirect costs associated with this agreement.
- 2.2.7. SDCSS manager will communicate with SDC LEAs regarding additional costs and services available pursuant to this MOA which the SDC LEAs may utilize for purposes of ensuring transportation is available to school of origin.
- 2.2.8. SDCSS will process all audit transfers and ensure additional costs are shared equally among all parties as agreed upon.

- 2.2.9. SDCSS will monitor the expenditures under this agreement, project usage and potential shortfalls in funding. As needed, SDCSS will facilitate the identification of resources needed to continue the provision of services under this agreement.
- 2.2.10. SDCSS will maintain all records required by the parties to this agreement.
- 2.2.11. SDCSS will provide quarterly reports to all parties.
- 2.2.12. SDCSS will report any incident involving injury or property damage during transportation provided by its contractor to the SDC LEA and County via email within 24 hours of having knowledge of incident.
- 2.2.13. In the event of a potential dispute, SDCSS will offer to mediate a meeting to attempt to resolve the concern before following the formal process referred to in item 4.
- 2.2.14. In the event of an exception request for transportation services via this MOA regarding student eligibility or cost-sharing, SDCSS will request exception review from County and will provide County the information needed to review the request.

### **2.3. SDC LEAs**

- 2.3.1. SDC LEAs will collaborate with SDCSS co-located Education Liaisons to determine whether existing transportation options are available to transport a student to their school of origin, and if not, a cost effective method available to transport eligible students in foster care to school of origin and additional costs associated with doing so.
- 2.3.2. SDC LEAs will notify SDCSS co-located Education Liaisons when they determine that the most appropriate method of transportation will be to utilize SDCSS contracted services under this agreement.
- 2.3.3. When inter-district transportation is being provided to an eligible student the responsible SDC LEAs agree to each fund one third of the additional cost to transport.
- 2.3.4. When one responsible SDC LEA elects to waive reimbursement for the additional costs of transportation provided by that SDC LEA, the other responsible SDC LEA agrees to fund fifty percent of the remaining additional costs.
- 2.3.5. When intra-district transportation is being provided to an eligible student the SDC LEA agrees to fund 50% (fifty percent) of the additional cost to transport.
- 2.3.6. SDC LEAs will track and communicate to SDCSS manager the actual and additional costs they incur when the SDC LEA is providing transportation utilizing SDC LEA resources to transport a student in foster care to school of origin.

2.3.7. SDC LEAs agree to make claims for recouping transportation costs to SDCSS, not the County.

2.3.8. SDC LEAs may notify SDCSS manager of their decision to not utilize SDCSS contracted services for any reason and transport the eligible student in an alternate safe and age appropriate manner.

### **3. County Contribution to Additional Cost**

Through June 30, 2022, the parties agree to implement this agreement and gather data on additional cost incurred in transporting foster students to their school of origin. SDC LEAs agree to notify SDCSS when they incur additional cost to transport an eligible student to school of origin in advance of transportation being provided. For the term of this agreement, and subject to annual renegotiation, reimbursement by the County to SDC LEAs for additional costs incurred to transport a student to their school of origin will be set and reimbursed at the rate of \$3.13/per mile, regardless of actual additional cost incurred or the percentages specified in Section 2 of this MOA. The parties agree to discuss this amount following collection of information on actual additional costs incurred.

### **4. Dispute Resolution Process**

This agreement is subject to the following dispute resolution process outlined in California Education Code:

E. C. 48853.5 (f) (9) If a dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to a pupil served by the local educational agency.

E. C. 48853.5 (i) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

### **5. Indemnity**

#### **5.1. Indemnity Claims Arising from the Sole Acts or Omissions of a Party:**

Each Party to this Agreement hereby agrees to defend and indemnify the other Parties to this Agreement, their agents, officers and employees, from any claim, action or proceeding against the other Parties, arising solely out of its own acts or omissions in the performance of this Agreement. At each Party's sole discretion, each Party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve any Party of any obligation imposed by this Agreement. Parties shall notify each other promptly of any claim, action or proceeding and cooperate fully in the defense.

- 5.2. **Indemnity Claims Arising from Concurrent Acts or Omissions:** The Parties hereby agree to defend themselves from any claim, action or proceeding arising out of the concurrent acts or omissions of the Parties. In such cases Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 5.3 below.
- 5.3. **Indemnity Joint Defense and Reimbursement and Reallocation:** Notwithstanding paragraph 5.2 above in cases where parties agree in writing to a joint defense, Parties may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of Parties. Joint defense counsel shall be selected by mutual agreement of Parties. Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as follows: Parties further agree that neither party may bind the other to a settlement agreement without the written consent of both Parties. Where a trial verdict or arbitration award, in a joint defense case, allocates or determines the comparative fault of parties, Parties may seek reimbursement and/or reallocation of defense costs, judgments and awards, consistent with such comparative fault.
6. **Insurance:** Prior to execution of this MOA, the parties must obtain at their own cost and expense, and keep in force and effect during the term of this MOA, including all extensions, appropriate insurance to cover any foreseeable losses under this MOA. The parties may maintain a program of self-insurance to meet the requirements of this paragraph.
7. **Conformance With Rules And Regulations:** All parties shall be in conformity with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices, and certificates as are required. All parties shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health, and sanitation.
8. **Permits and Licenses:** The parties certify that they possess and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the other parties, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. Each party reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
9. **Governing Law:** This MOA shall be governed, interpreted, construed, and enforced in accordance with the laws of the State of California.
10. **Information Privacy and Security Provisions:** All parties to this MOA agree to comply with all applicable laws and regulations related to the privacy and security of

client's information, such as, but not limited to the confidentiality of the child welfare records per California Welfare & Institutions Code sections 827 and 10850. In addition, any data shared between the parties electronically shall occur via encrypted software.

11. **Third Party Beneficiaries Excluded:** This MOA is intended solely for the benefit of County and SDCSS and SDC LEAs. Any benefit to any third party is incidental and does not confer on any third party to this MOA any rights whatsoever regarding the performance of this MOA. Any attempt to enforce provisions of this MOA by third parties is specifically prohibited.
12. **Amendments to MOA:** Any party may propose amendments to this MOA by providing written notice of such amendments to the other party. This MOA may only be amended by a written amendment signed by all parties.
13. **Severability:** If any terms or provisions of this MOA or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this MOA, or the application of such term and provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this MOA shall be valid and enforced to the maximum extent permitted by law.
14. **Full Agreement:** This MOA represents the full and entire agreement between the parties and supersedes any prior written or oral agreements that may have existed.
15. **Scope of MOA:** This MOA only applies to the program described herein and does not set forth any additional current or future obligations or agreements between the parties, except that the parties may by written amendment amend the scope of this MOA.
16. **Live Well San Diego Vision:** The County of San Diego, Health and Human Service Agency (HHS), supports the *Live Well San Diego* vision of Building Better Health, Living Safely, and Thriving. *Live Well San Diego*, developed by the County of San Diego, is a comprehensive, innovative regional vision that combines the efforts of partners inside and outside County government to help all residents be healthy, safe, and thriving. All HHS partners and contractors, to the extent feasible, are expected to advance this vision. Building Better Health focuses on improving the health of residents and supporting healthy choices. Living Safely seeks to ensure residents are protected from crime and abuse, neighborhoods are safe, and communities are resilient to disasters and emergencies. Thriving focuses on promoting a region in which residents can enjoy the highest quality of life.

16.1 Information about the *Live Well San Diego* can be found on the County's website and a website dedicated to the vision:

[http://www.sdcounty.ca.gov/hhsa/programs/sd/live\\_well\\_san\\_diego/index.html](http://www.sdcounty.ca.gov/hhsa/programs/sd/live_well_san_diego/index.html)  
<http://www.LiveWellSD.org>



17. **Term:** This MOA shall be effective as of July 1, 2019 and shall terminate on June 30, 2022.

18. **Termination For Convenience:** HHSA or the SDCSS may, by written notice stating the extent and effective date, terminate this MOA for convenience in whole or in part, at any time.

19. **Counterparts:** This MOA may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. LEA members may be added as a party to this MOA as requested without formal amendment. Such shall have executed and delivered a joinder to the County of San Diego HHSA with a copy to SDCSS attached hereto as Exhibit A – Joinder of Additional Signatory to Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed, such parties acting by their representatives being thereunto duly authorized.

County of San Diego

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
NICK MACCHIONE, FACHE  
Agency Director  
Health and Human Services Agency

San Diego County Superintendent of Schools

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
MICHAEL SIMONSON, Assistant  
Superintendent, Business Services

**EXHIBIT A – JOINDER OF ADDITIONAL SIGNATORY TO AGREEMENT**

## **Additional Signatories to Agreement**

---

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed, such parties acting by their representatives being thereunto duly authorized.

Signed by:

SAN PASQUAL UNION ELEMENTARY  
SCHOOL DISTRICT

Dated: \_\_\_\_\_

By:

\_\_\_\_\_  
MARK BURROUGHS, Superintendent San  
Pasqual Union Elementary School  
District